

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

**FILED**

APR 01 2011

Form To Be Used By A Prisoner in Filing a Complaint  
Under the Civil Rights Act, 42 U.S.C. § 1983

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY \_\_\_\_\_ (2)  
DEPUTY CLERK

Robert J. Monterz # 11-06632

Plaintiff's name and ID Number

3614 Bill Price Rd

TRAVIS County Correctional Complex Del Valle, TX 78617

Place of Confinement

**A11CA 266LY**

CASE NO.

(Clerk will assign the number)

\* GREG HAMILTON, Travis County Sheriff,

P.O. Box 1748, AUSTIN, TX 78767

Defendant's name and address

\* JAMES N. SYLVESTER, Chief Deputy,

P.O. Box 1748, AUSTIN, TX 78767

Defendant's name and address

\* TRAVIS COUNTY JAIL INTAKE NURSE (name unknown)

500 West 10<sup>th</sup> Street, AUSTIN, TX 78701 (Central Booking)

Defendant's name and address

(DO NOT USE "ET AL.")

\* R. Flores #3112, Correction Officer, % TCCC

3614 Bill Price Rd, Del Valle, TX 78617

Defendant's NAME and Address

\* R. Brown #4108, Correction Officer,

3614 Bill Price Rd, Del Valle, TX 78617

Defendant's NAME and Address  
Medical Director Committee % TCCC - its 6-medical  
3614 BILL PRICE RD, DEL VALLE, TX 78617

Defendant's NAME & Address

TRAVIS COUNTY

314 West 11<sup>th</sup> St, Suite 300 AUSTIN, TX 78701

Defendant's NAME & Address

### INSTRUCTIONS - READ CAREFULLY

#### NOTICE:

Your complaint is subject to dismissal unless it conforms to these instructions and this form.

1. To start an action you must file an original and one copy of your complaint with the court. You should keep a copy of the complaint for your own records.
2. Your complaint must be legibly handwritten, in ink, or typewritten. You, the plaintiff, must sign and declare under penalty of perjury that the facts are correct. If you need additional space, **DO NOT USE THE REVERSE SIDE OR BACK SIDE OF ANY PAGE.** ATTACH AN ADDITIONAL BLANK PAGE AND WRITE ON IT.
3. You must file a separate complaint for each claim you have unless the various claims are all related to the same incident or issue or are all against the same defendant, Rule 18, Federal Rules of Civil Procedure. Make a short and plain statement of your claim, Rule 8, Federal Rules of Civil Procedure.
4. When these forms are completed, mail the original and one copy to the Clerk of the United States Court for the appropriate District of Texas in the Division where one or more named defendants are located, or where the incident giving rise to your claim for relief occurred. The list labeled as "VENUE LIST" is posted in your unit law library. It is a list of the Texas prison units indicating the appropriate District Court, the Division and an address list of the Divisional Clerks.

## FILING FEE AND IN FORMA PAUPERIS

1. In order for your complaint to be filed, it must be accompanied by the filing fee of \$350.00.
2. If you do not have the necessary funds to pay the filing fee in full at this time, you may request permission to proceed *in forma pauperis*. In this event you must complete the application to proceed *in forma pauperis* (IFP), setting forth information to establish your inability to prepay the fees and costs or give security therefor. You must also include a current six (6) month history of your Inmate Trust Account. You can acquire the application to proceed IFP and appropriate Inmate Account Certificate from the law library at your prison unit.
3. 28 U.S.C. 1915, as amended by the Prison Litigation Reform Act of 1995 (PLRA), provides, "...if a prisoner brings a civil action or files an appeal *in forma pauperis*, the prisoner shall be required to pay the full amount of a filing fee." Thus, the Court is required to assess and, when funds exist, collect, the entire filing fee or an initial partial filing fee and monthly installments until the entire amount of the filing fee has been paid by the prisoner. If you submit the application to proceed *in forma pauperis*, the Court will apply 28 U.S.C. 1915 and, if appropriate, assess and collect the entire filing fee or an initial partial filing fee, then monthly installments from your Inmate Account, until the entire \$350 filing fee has been paid.
4. If you intend to seek *in forma pauperis* status, then do not send your complaint without an Application to Proceed IFP, and the Certificate of Inmate Trust Account. Complete all the essential paperwork before submitting it to the Court.

## CHANGE OF ADDRESS

It is your responsibility to inform the Court of any change of address and its effective date. Such notice should be marked "**NOTICE TO THE COURT OF CHANGE OF ADDRESS**" and shall not include any motion (s) for any other relief. Failure to file a NOTICE TO THE COURT OF CHANGE OF ADDRESS may result in the dismissal of your complaint pursuant to Rule 41(b), Federal Rules of Civil Procedure.

### I. PREVIOUS LAWSUITS:

- A. Have you filed *any* other lawsuits in state or federal court relating to your imprisonment?  YES  NO
- B. If your answer to "A" is "yes," describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, giving the same information.)

1. Approximate date of filing lawsuit: June 2008
2. Parties to previous lawsuit:  
Plaintiff(s) Robert J. Montez \*\*\*\*\*  
Defendant(s) Travis County and officer Chris Hotard
3. Court: (If federal, name the district; if state, name the county.) Western District
4. Docket Number: ?
5. Name of judge to whom case was assigned: Judge Yankel
6. Disposition: (Was the case dismissed, appealed, still pending?)  
case was settled out of court
7. Approximate date of disposition: October/November 2009

TRAVIS County Correctional Complex

3614 Bill Price Rd

Del Valle, TX 78617

## II. PLACE OF PRESENT CONFINEMENT:

## III. EXHAUSTION OF GRIEVANCE PROCEDURES:

Have you exhausted both steps of the grievance procedure in this institution?

 YES  NO

Attach a copy of the Step 2 grievance with the response supplied by the prison system.

## IV. PARTIES TO THIS SUIT:

A. Name and address of plaintiff: Robert J. Montez #11-06632

3614 Bill Price Rd., Del Valle, TX. 78617

c/o Brad Nielsen 12430 Metric Blvd #10105, Austin, TX. 78758

B. Full name of each defendant, his official position, his place of employment, and his full mailing address.

Defendant #1: Greg Hamilton, TRAVIS COUNTY Sheriff, TCSO, P.O. Box 1748, AUSTIN, TEXAS 78767

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you. INADEQUATE MEDICAL CARE, MEDICAL MALPRACTICE: NEGLIGENCE, OFFICIAL OPPRESSION, EXCESSIVE USE OF UNNECESSARY FORCE, PHYSICAL INJURY &amp; BODILY HARM, MENTAL ANGUISH, CARELESS OMISSION, MALICIOUS INTENT.

Defendant #2: James N. Sylvester, Chief Deputy, TCSO, P.O. Box 1748, AUSTIN, TEXAS 78767

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you. INADEQUATE MEDICAL CARE, MEDICAL MALPRACTICE: NEGLIGENCE, OFFICIAL OPPRESSION, EXCESSIVE USE OF UNNECESSARY FORCE, PHYSICAL INJURY &amp; BODILY HARM, MENTAL ANGUISH, CARELESS OMISSION, MALICIOUS INTENT.

Defendant #3: TRAVIS COUNTY JAIL INTAKE NURSE, TCJ, 500 West 10<sup>th</sup> Street, Austin, Texas 78701 (Central Booking) CARELESS OMISSION, MALICIOUS INTENT.

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you. INADEQUATE MEDICAL CARE, MEDICAL MALPRACTICE: NEGLIGENCE, CARELESS OMISSION, PHYSICAL INJURY, BODILY HARM, MENTAL ANGUISH, CARELESS OMISSION, MALICIOUS INTENT.

Defendant #4: R. Flores #3112, Corrections Officer, TCSO, TCCC 3614 Bill Price Rd, Del Valle, TX. 78617

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you.

OFFICIAL OPPRESSION, EXCESSIVE USE OF UNNECESSARY FORCE, PHYSICAL INJURY, BODILY HARM, MENTAL ANGUISH, CARELESS OMISSION.

Defendant #5: R. Brown #4108, Corrections Officer, TCSO, TCCC 3614 Bill Price Rd, Del Valle, TX. 78617

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you.

OFFICIAL OPPRESSION, EXCESSIVE USE OF FORCE (UNNECESSARY), PHYSICAL INJURY, BODILY HARM, MENTAL ANGUISH, CARELESS OMISSION.

Def #6 M. Summers, Medical Director 3614 Bill Price Rd, Del Valle, TX. 78617

Def #7 TRAVIS County, 314 West 11<sup>th</sup> Street, Suite 300, Austin, TX 78701

(see 4A through 4E)

V. STATEMENT OF CLAIM: *(see Attached Continuance pg (4-A+E))*

State here in a short and plain statement the facts of your case, that is, what happened, where did it happen, when did it happen, and who was involved. Describe how each defendant is involved. You need not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach extra pages if necessary, but remember that the complaint must be stated briefly and concisely. IF YOU VIOLATE THIS RULE, THE COURT MAY STRIKE YOUR COMPLAINT.

~~1) On or About The 10<sup>th</sup> day of FEBRUARY, 2011 I was Administered the wrong medication and for an excessive amount (overdose) of Medication by the TCSO, Central Booking Intake Nurse (name still unknown). On or About the 10<sup>th</sup> day of FEBRUARY, 2011 at or about 10:30 p.m. I was denied critical medications. Furthermore I was denied Mental Health Services specifically - psychotropic, anti-psychotic, and other psych meds by medical staff and suffered Acute <sup>bewzo</sup> Withdrawals, placed in upper tier housing in (HSB-12-01) at TCC against medical orders (documented) and placed in G.P. Housing w/out meds.~~

~~2) ON OR ABOUT THE 2<sup>nd</sup> day of March, 2011, I was physically Assaulted by officers R. Flores #3112 & Brown #4108 by means of excessive <sup>use</sup> of unnecessary use of force. At approx 7:00am at TCC Bldg 12-D4-103 my cell door was opened <sup>by Flores</sup> and officer Flores prompted me to come out of my cell; once out he grabbed my shirt front and tried to swing me~~

## VI. RELIEF: State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.

Monetary Compensation,  
Punitive Compensation for damages & physical injury & emotional distress  
mental anguish

## VII. GENERAL BACKGROUND INFORMATION:

- A. State, in complete form, all names you have ever used or been known by including any and all aliases:

Robert J. Montez, Robert John Montez

- B. List all TDCJ-ID identification numbers you have ever been assigned and all other state or federal prison or FBI numbers ever assigned to you, if known to you.

TDCJ-ID # 1485331

## VIII. SANCTIONS:

- A. Have you been sanctioned by any court as a result of any lawsuit you have filed? YES  NO

- B. If your answer is "yes", give the following information for every lawsuit in which sanctions were imposed. (If more than one, use another piece of paper and answer the same questions.)

1. Court that imposed sanctions (if federal, give the district and division): N/A

2. Case Number: N/A

3. Approximate date sanctions were imposed: N/A

4. Have the sanctions been lifted or otherwise satisfied?

N/A YES NO

V. STATEMENT OF CLAIM.

I - ON OR ABOUT THE 10<sup>TH</sup> DAY OF FEBRUARY, 2011 WHILE BEING BOOKED INTO THE TRAVIS COUNTY JAIL AT CENTRAL BOOKING IN FRONT OF THE FINGER PRINTER / IMAGER AND MUG SHOT DESK, THE TCSO INTAKE SCREENING NURSE DID THEM AND THERE, AT ABOUT 12:00 A.M. (C.S.T.) ADMINISTERED TO ME THE INCORRECT PRESCRIBED MEDICATIONS AND/OR IN AN EXCESSIVE AMOUNT, CAUSING SEVERE REACTIONS, SIDE EFFECTS, PAINS AND SUFFERINGS including BUT NOT LIMITED TO THE FOLLOWING; DIARRHEA, DIZZINESS, DROWSINESS, HEADACHES, LOSS OF APPETITE, STOMACH PAINS, MOUTH SORES, MUSCLE ACHES, NAUSEA, UPSET STOMACH, FATIGUE, TROUBLE SLEEPING, HALLUCINATIONS, SKIN RASH, DIMENTIA, AGGRESSION, ANXIETY, DEPRESSION, SUICIDAL THOUGHTS, DELUSIONS, CONFUSION, WEAKNESS, MENTAL AND MOOD DISORDERS.

II - ON OR ABOUT THE 10<sup>TH</sup> DAY OF FEBRUARY, 2011, WHILE HOUSED AT TCJ IN P2-215 AT OR ABOUT 10:30 p.m. (C.S.T.),

I ASKED THE POST OFFICER ON DUTY TO SPEAK TO THE NURSE AND ASKED FOR MY MEDICATIONS AS PRESCRIBED BY MY LICENSED AND CERTIFIED Medical Doctor for my Chronic Diagnosis AND WAS DENIED Critical Life SUSTAINING PRESCRIBED MEDICATIONS AND MEDICAL ATTENTION. I SUFFERED CONTINUOUS SEVERE SIDE EFFECTS, ACUTE WITHDRAWALS from psychotropic medications, and subjected /EXPOSED to the potential of Virus to become LESS SENSITIVE TO my PRESCRIBED AND OTHER MEDICATIONS. PER DOCTORS ORDERS, PHARMACISTS, & Manufacturer WARNINGS, I AM NOT TO SUDDENLY STOP TAKING MY MEDICATIONS HS Prescribed Due to suffering severe side effects and developing a resistance to drug therapies.

II - ON OR ABOUT THE 12<sup>TH</sup> DAY OF FEBRUARY, 2011 I WAS TRANSFERRED FROM TCS P2-215 AND PLACED IN A DANGEROUS LIVING CONDITION AGAINST Medical Directives FOR LOWER TIER HOUSING AND HOUSED ON UPPER TIER AT TCCC - HSB-12-01. I WAS EXPOSED TO CLIMBING METAL STAIRWAYS AGAINST DOCUMENT MEDICAL ORDERS, DUE TO SEVERE & ACUTE withdrawls, potential seizure risks,

AND OTHER MEDICALLY DOCUMENTED SAFETY CONCERNS.

THEN ON FEBRUARY 24<sup>th</sup>, 2011 I was placed in  
GENERAL POPULATION having without Doctors Clearance & Consent.

IV - FROM ABOUT FEBRUARY 10<sup>th</sup>, 2011 through MARCH 18, 2011,  
while IN CUSTODY OF TCSO AT TCJ AND TCCC, I  
WAS DENIED MEDICAL ATTENTION AND MEDICATIONS FOR MY  
CLINICALLY DIAGNOSED AND DOCUMENTED MENTAL HEALTH  
CONDITIONS. DUE TO TCSO AND MEDICAL STAFF'S DELIBERATE  
INDIFFERENCE TO ADEQUATE CARE AND ~~CARE~~ TREATMENT  
I SUFFERED GRAVE EMOTIONAL & MENTAL ANGUISH, PAINS &  
SUFFERINGS AND PHYSICAL INJURY (WITHDRAWALS) from well  
DOCUMENTED AND DECLARED DIAGNOSIS & DRUG THERAPIES.

\* PLEASE NOTE THAT THE FOLLOWING PARTIES ARE  
BEING HELD LIABLE FOR DELIBERATE INDIFFERENCE, MEDICAL  
MALPRACTICE, GROSS NEGLIGENCE, CARELESS OMISSIONS,  
PAIN & SUFFERING, MENTAL AND EMOTIONAL ANGUISH,  
INADEQUATE MEDICAL CARE, & EXPOSING ME TO DANGEROUS  
& HAZARDOUS LIVING CONDITIONS, CRUEL & UNUSUAL PUNISH-  
MENT, FOR CLAIMS I through IV :

1. Greg Hamilton  
2. James Sylvester

3. TCSO INTAKE SCREENING NURSE at TCJ- central booking  
4. M. Summers, MEDICAL Director.

V - EXCESSIVE USE OF FORCE - (Gangs Brutality)  
ON OR ABOUT THE 2nd DAY OF MARCH, 2011 AT OR  
ABOUT 7:00 A.M. (C.S.T.) I WAS ASSAULTED BY

TCSO CORRECTIONAL OFFICER R. FLORES #3112 and  
 R. Brown #4108 by EXCESSIVE USE OF UNNECESSARY  
 FORCE BEING MEETED OUT FOR THE SOLE PURPOSE OF CAUSING  
 MORAL AND BODILY HARM IN A MALICIOUS AND  
 SADISTIC MANNER AND INTENT. WHILE BEING HELDED  
 AT TCCC IN Bldg 12-D4-103, AT OR ABOUT 7:00 A.M. (C.S.T.)  
 OFFICER FLORES #3112 PROMPTED ME TO COME OUT OF MY  
 CELL INTO THE DAYROOM AREA BY UNLOCKING MY CELL  
 DOOR AND UPON EXITING, OFFICER FLORES #3112 GRABBED  
 ONTO THE FRONT OF MY SHIRT "HORSE COLLAR" AND TRIED TO  
 SWING ME WITH ONE ARM AGAINST THE CELL DOOR. I LOST  
 MY BALANCE DUE TO HIS INAPPROPRIATE ACTIONS AND CAME  
 OUT OF MY JAIL ISSUED SLIPPERS AND WAS BARE FOOTED  
 ON SLICK CONCRETE FLOORS. OFFICER FLORES THEN WRAPPED  
 HIS LEGS AROUND MINE AND TWISTED HIS BODY TO SLAM  
 ME DOWN UPON THE CONCRETE FLOOR. HE THEN WITH  
 MALICIOUS AND SADISTIC INTENT WRAPPED HIS ARM  
 AROUND MY THROAT CUTTING OFF MY AIR SUPPLY VIA  
 A CHOKE HOLD WITH EXTREME AND ABUSIVE FORCE  
 OF PRESSURE. OFFICER BROWN #4108 CAME IN  
 TO ASSIST IN THE BRUTAL FORCE AND ASSISTED  
 FLORES #3112, IN AN IMPROPER HANDCUFFING ME  
 BY TWISTING ONE WRIST UP AND ONE WRIST DOWN  
 (OPPOSITE DIRECTIONS) and squeezing cuffs on

(4-D)

AS TIGHTLY AS THEY WOULD CLOSE AROUND MY WRISTS CAUSING LOSS OF BLOOD FLOW, CIRCULATION, NUMBNESS TO HANDS AND ARMS, SHOULDER, NECK AND BACK INJURIES, FRONT CHIPPED TOOTH, CUTS, SWELLING AND BRUISING TO WRISTS. I WAS PLACED IN A RESTRAINT CHAIR ABOUT AN HOUR LATER. I WAS DENIED NUMEROUS ATTEMPTS FOR ONE WEEK TO FOLLOW UP AND SEEK MEDICAL ATTENTION, PICTURES, AND DOCUMENTATION AND TREATMENTS FOR INJURIES SUSTAINED. I WAS NOT POSING A THREAT TO THE SECURITY OR SAFETY OF OTHERS AS THEY CONTEND NOR RESISTING ANYTHING.

OFFICER DILLARD #4151 DECLARES THAT TCSO HAS SOLE CUSTODY AND CONTROL OF AUDIO & VIDEO OF THE INCIDENT WHICH WILL SUPPORT MY CLAIMS AND ADD MERIT TO THIS SUIT.

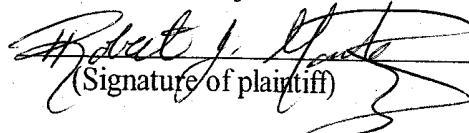
\* Parties Being held liable for claim # II -

- |                    |                    |
|--------------------|--------------------|
| 1. Greg Hamilton   | 3. R. Flores #3112 |
| 2. James Sylvester | 4. R. Brown # 4108 |

- C. Has any court ever warned or notified you that sanctions could be imposed?  YES  NO
- D. If your answer is "yes", give the following information for every lawsuit in which warning was imposed. (If more than one, use another piece of paper and answer the same questions.)

1. Court that imposed warning (if federal, give the district and division): Western dist., Austin Division
2. Case Number: ?
3. Approximate date warnings were imposed: June/July 2008

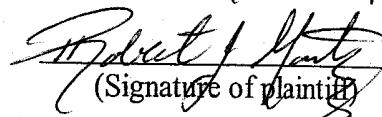
Executed on: March 29, 2011  
DATE

Robert J. Montez, plaintiff pro se  
  
(Signature of plaintiff)

#### PLAINTIFF'S DECLARATIONS

1. I declare under penalty of perjury all facts presented in this complaint and attachments thereto are true and correct.
2. I understand if I am released or transferred, it is my responsibility to keep the Court informed of my current mailing address and failure to do so may result in the dismissal of this lawsuit.
3. I understand that I must exhaust all available administrative remedies prior to filing this lawsuit.
4. I understand I am prohibited from bringing an *in forma pauperis* lawsuit if I have brought three or more civil actions in a Court of the United States while incarcerated or detained in any facility, which lawsuits were dismissed on the ground they were frivolous, malicious, or failed to state a claim upon which relief may be granted, unless I am under imminent danger of serious physical injury.
5. I understand even if I am allowed to proceed without prepayment of costs, I am responsible for the entire \$350 filing fee and costs assessed by the Court, which shall be deducted in accordance with the law from my inmate account by my custodian until the filing fee is paid.

Signed this 29<sup>th</sup> day of March, 2011.  
(Day) (month) (year)

Robert J. Montez, plaintiff  
  
(Signature of plaintiff)

**WARNING:** The Plaintiff is hereby advised any false or deliberately misleading information provided in response to the following questions will result in the imposition of sanctions. The sanctions the Court may impose include, but are not limited to monetary sanctions and/or the dismissal of this action with prejudice.